**IN THE HIGH COURT OF GUJARAT AT AHMEDABAD**

**FIRST APPEAL No. 1286 of 1993**

**For Approval and Signature:**

**HONOURABLE MR.JUSTICE AKSHAY H.MEHTA**

==========

1 Whether Reporters of Local Papers may be allowed to see the judgment ?

2 To be referred to the Reporter or not ?

3 Whether their Lordships wish to see the fair copy of the judgment ?

4 Whether this case involves a substantial question of law as to the interpretation of the constitution of India, 1950 or any order made thereunder ?

5 Whether it is to be circulated to the civil judge ?

==========

**HAROON ABDUL MAJID PADA - Appellant(s)**
**Versus**
**PRATAPSINH PUNJABHAI BARIA & 3 - Defendant(s)**

==========

**Appearance :**

MR MA KHARADI for Appellant(s) : 1,
NOTICE UNSERVED for Defendant(s) : 1,
MRS VASAVDATTA BHATT for Defendant(s) : 2,
None for Defendant(s) : 3,
NOTICE SERVED for Defendant(s) : 4,
MR AV TRIVEDI for Defendant(s) : 5,

==========

**CORAM : HONOURABLE MR.JUSTICE AKSHAY H.MEHTA**

**Date : 31/01/2007**

**ORAL JUDGMENT**

1. Original claimant of MACP No. 1051 of 1984 filed before MACT [Auxi.] Kheda at Nadiad has preferred this

appeal under Section 110-D of the Motor Vehicles Act for seeking enhancement of the compensation awarded by the Claims Tribunal by judgment and award dated 10th February, 1992. The Tribunal has awarded a sum of Rs.33,200=00 against the claim of Rs.50,000=00. In the present appeal, additional compensation of Rs.16,800=00 is claimed.

2. The appellant on the date of the accident i.e.. 21st February, 1984 was travelling in a tempo bearing registration no. GRW 1073 along with his goods. He was doing business of sale of fruits. The tempo was travelling from Mehsana and was going to Godhra. When it reached village Sevaliya it collided with S.T. bus bearing registration no. GRW 6844. As a result of the same, the appellant suffered injuries on the leg. He was initially treated at local Primary Health Center and thereafter he was shifted to Godhra hospital and subsequently to SSG hospital at Vadodara on 21st April, 1984. At first instance, he was kept as an indoor patient for nine days and thereafter on the second occasion for five days. As a result of the injuries suffered by the appellant there was shortening of the leg by 0.7” inches. He, therefore, preferred the aforesaid claim petition for seeking compensation.

3. Original opponents no. 1 and 2 resisted the claim by filing written statement at Exh. 23. They denied the averments made in the claim petition. According to them the driver of the the ST bus was not negligent. They threw the blame on the driver of the tempo in which the appellant was travelling. Original opponents no. 3 and 4 did not resist the claim whereas, original opponent no. 4 United Insurance Co. Ltd., the insurer of the tempo resisted the claim by filing written statement at Exh. 47. It was contended that there was no valid insurance in existence in respect of tempo in question. It was prayed that the insurance company be exonerated.

4. At the hearing, the parties led evidence, oral as well as documentary. On the basis of the said material, the Tribunal arrived at a conclusion that both the drivers were at fault. However, the driver of the S.T. bus was held negligent to the extent of 80% whereas, the driver of the tempo was held negligent to the extent of 20%. The Tribunal further held that the appellant deserved compensation of Rs.33,200=00 together with interest at the rate of 12% per annum from the date of the application till realization and the proportionate costs. The Tribunal also held that the liability was composite.

5. In this appeal, the appellant has claimed enhancement in compensation. I have heard Mr. M. A. Kharadi learned advocate for the appellant and Mr. A. V. Trivedi learned advocate for the respondent insurance company. It is submitted by Mr. Kharadi that the Tribunal has erred in applying multiplier of 15 only. In his submission it ought to have been 17, considering the young age of the appellant. He has further submitted that under the head of pain, shock and suffering and future loss of income, the Tribunal has awarded less amount. As against that Mr. Trivedi has submitted that the accident took place prior to the introduction of the amendment and, therefore, the liability of the insurance company was not there since the appellant was travelling as gratuitous passenger in a goods vehicle. In support of his submission, Mr. Trivedi has relied on the decision rendered by the Apex Court.

6. Having carefully considered the submissions of the learned advocates and also the record and proceedings of the case, it clearly appears that the appellant received injuries in a vehicular accident which took place on 22nd February, 1984. He received serious injuries on his left leg including the fracture of tibia and

fibula and that resulted into permanent disability i.e., shortening of the leg by 0.7″ inch. These facts have not been disputed at all. So far as the aspect of negligence is concerned, neither of the learned advocates has advanced any submissions. I have of course perused the discussion on the point and it appears that the Tribunal has adequately and appropriately considered the relevant evidence and decided the issue holding the driver of the ST bus negligent to the extent of 80% and the driver of the tempo to the extent of 20%. There is, therefore, no need to disturb the said finding.

7. The relevant aspect which is considered is whether the compensation awarded by the Tribunal is just and adequate. The Tribunal has awarded a sum of Rs.10,000=00 under the head of pain, shock and suffering. The injuries suffered by the appellant are adequately described in the case papers at Exh. 79 and in the certificate of Civil Hospital at Godhra at Exh. 78. The total hospitalization of the appellant as indoor patient is of 14 days. Dr. Harshadbhai Patel – Orthopedic Surgeon examined the appellant and determined the disability of permanent nature at 11%, He had issued certificate at Exh. 54. The doctor has found that he was limping since there was shortening of the leg by 0.7″ inch. The

disability assessed by the doctor is in respect of the entire body. The Tribunal after taking into consideration the medical evidence and the disability, awarded the aforesaid sum. This appears to be slightly on the lower side. In the case of **Babu Mansa v. Ahmedabad Municipal Corporation reported in 1978 ACJ p.485**, the Division Bench of this Court has awarded a sum Rs.15,000=00 for shortening of the leg by 1 cm. The case of the present appellant stands slightly on the better footing and hence he also deserves to be awarded a sum of Rs.15,000=00 under the same head. So far as the loss of prospective income is concerned, the Tribunal has awarded his income at Rs.1,000=00 and has held the monthly loss at Rs.100=00 by fixing disability at 10%. Here also the Tribunal appears to have committed an error. It is in evidence that the appellant at the relevant time was in his twenties. He was a fruit merchant. His income would not have remained static and it would have increased with the passage of time. By applying the formula evolved in the case of **Ritaben alias Vanitaben Wd/o. Dipakbhai Haribhai v. Ahmedabad Municipal Transport Service reported in 1999 (1) GLR p.388** by the Division Bench of this Court, his prospective income can be assessed at Rs.500=00 per month and monthly loss would come to Rs.150=00 and the annual loss of income to Rs.1,800=00. Though Mr. Kharadi has

submitted that the multiplier of 15 is on lower side, in my opinion, it is proper and the Tribunal has not committed any error on that count. In view of the same the prospective loss of income would come to Rs.27,000=00. Thus, the appellant would be entitled to receive additional compensation of Rs.9,000=00 under the head of loss of prospective income. So far as the other heads are concerned, namely medical expenses, expenses for special diet and transport etc., the award seems to be proper. Hence, the appellant would be entitled to receive additional sum of Rs.14,000=00 by way of compensation i.e., in all Rs.47,200=00.

8. So far as the liability of the insurance company is concerned, Mr. Trivedi has relied on the decision of the Apex Court in the case of **National Insurance Co. Ltd., v. Bommithi Subbhayamma & Ors., reported in 2005 [Vol. II) ACJ pg. 721**. In the said decision, the Apex Court has placed reliance on its earlier decision rendered in the case of **New India Assurance Co. Ltd., v. Asha Rani & Ors., reported in A.I.R., 2003 S.C. pg. 607** and has held that it was not necessary for the insurance company to cover the risk of the gratuitous passenger travelling in a goods vehicle. In the instant case also same is the position. Therefore, the submission of Mr. Trivedi is required to be accepted and the insurance

company is exonerated from its liability to satisfy the award and owner of the tempo is liable. However, since there is composite liability, the appellant can recover the entire award amount from respondent no. 2- Gujarat State Road Transport Corporation, together with interest on the additional amount at the rate of 12% per annum from the date of the application till realization and also proportionate costs.

9. In view of the aforesaid, the appeal is partly allowed.

R & P to be re-transmitted to the Tribunal forthwith.

[Akshay H. Mehta, J.]

/phalguni/